20

DIVISION BENCH: HON. SHRI V.K.SHRIVASTAVA & HON. SHRI DHIRENDRA MISHRA.JJ

Criminal Appeal No. 131 of 2001

Appellant	**Billoo @ Balkrishan, S/o. Bhimsing, aged about 25 years, R/o. Golabuda (Sadakpara) P.S. Kapoo, Distt. Raigarh.**
	Vs.
Respondent	**State of Madhya Pradesh, Through, Police Station - Dharamjaigarh.**

Criminal Appeal No. 74 of 2001

Appellant	**Punuram, S/o.Lohra Uraon, aged about 21 years, R/o. Golabuda (Sadakpara) P.S. Kapoo, Distt. Raigarh.**
	Vs.
Respondent	**State of Madhya Pradesh, Through, Police Station - Dharamjaigarh.**

Present:

Shri Abhay Tiwari, learned counsel for the appellant.

Shri D.K.Gwalre, learned Dy. G.A. for the State/respondent.

J U D G M E N T
(27/03/2006)

Per Dhirendra Mishra, J

By this common order, Criminal Appeal No. 131/2001 preferred by accused/appellant Balkrishna @ Biloo and Criminal Appeal No. 74/2001 preferred by accused/appellant Punu Ram are being disposed of as they are directed against the common judgment of conviction dated 5th of June 2001 passed in S.T. No. 151/98 by learned Additional Sessions Judge, Raigarh and by which the learned Additional Sessions Judge after holding the accused/appellants guilty under Section 302/34 of the IPC has convicted and sentenced them with life imprisonment.

21

2. Case of the prosecution, in brief, is that accused/appellants were serving with Mahindra at Raigarh and deceased Nanhu @ Sukhlal was also working with them in the same place (Mahindra) and in the process they became friends. 10-15 days prior to the date of incident, the accused persons expressed their desire to take deceased Nanhu @ Sukhlal to their village. However, the father of deceased namely Ramcharan (P.W.-1) did not permit and ultimately some 7-8 days before the date of incident Nanhu @ Sukhlala disregarding the advice of his father went to their village Golabuda. He also carried his air gun, Rs. 400-500/- cash and watch. It is the case of prosecution that he was putting on a thread and a *Kadaa* over his wrist. When he did not return even after 7-8 days his father Ramcharan sent one Maniram (P.W.-3) to enquire about his son and he returned from the village and informed that Nanhu shall be returning within two-three days. However, even then Nanhu did not return and later on Maniram informed that somebody has been murdered and there is a report to this effect in the police station Pathalgaon whereupon father of deceased Ramcharan (P.W.-1), brother of the deceased Anand Kumar Sahu (P.W.-2) and others went to the police station and on the basis of the wearing apparels, *Kadaa* etc. they identified that the unidentified deceased was in fact none but Nanhu @ Sukhlal. From the record it appears that merg intimation was recorded on 23rd June 1998 on the basis of information given by one Ghasiram (P.W.-9) Kotwar of village Behnatagor that an unidentified dead body was found on 22.06.98 at about 5.00 p.m. near river Mand and the deceased was putting on black colour full pant. After receiving this information, police proceeded to the scene of occurrence conducted inquest over the dead body of the deceased and prepared report of Ex.P-4 in the presence of witnesses. One slipper was seized from near the body of deceased vide Ex.P-6. Thereafter on the basis of the statements of the father and brother of the deceased namely Ramcharan and Anand Kumar further investigation was conducted and during investigation on the basis of memorandum dated 09.07.98 of Ex.P-10 of accused/appellant Billoo @ Balkrishan one axe and one shovel were seized vide Ex.P-7. A further memorandum was recorded on 09.07.98 of accused/appellant Billoo @ Balkrishan and on information given by him in his memorandum, air gun, clothings, suit case,

22

Benzo, pant –shirt, lungi, identity card, phographs and pellets of the air gun were seized vide Ex.P-9. A nylon waist was also seized vide Ex.P-11. Blood stained soil and plain soil were taken into possession from the place of incident vide Ex.P-12. A stereo deck was seized from accused/appellant Punuram vide Ex.P-13. Spot map of Ex.P-19 was prepared by village Patwari Darbaajar Singh (P.W.-25). First Information Report of Ex.P-20 was registered on 09.07.98 against unknown persons. Thereafter dead body was sent for autopsy on 23.06.98 to P.H.C. Pathalgaon along with Full pant, *Kadaa*, thread over the wrist and underwear. The doctor J. Minj, P.W.-31 conducted the post mortem over the dead body of the deceased and submitted his report vide Ex.P-25. The doctor performing the autopsy has given his opinion that the cause of death was due to asphyxia and the duration elapsed till reporting post mortem was opined as 6-10 days and nature of death was homicidal. The accused/appellants were arrested on 10.07.98. After completion of the investigation charge sheet under Sections 302/34 and 201 of the IPC was filed in the Court of Judicial Magistrate First Class, Dharamjaigarh who in turn committed the case to the Court of Sessions Judge and the same was received on transfer for trial by the learned Additional Sessions Judge.

3. The prosecution in order to establish the charge against the accused/appellants examined 31 witnesses. Thereafter statements of the accused/appellants were recorded under Section 313 of the Cr.P.C. in which they denied the circumstances appearing against them. The accused/appellants abjured their guilt.

4. Learned Sessions Judge after hearing the counsel for the parties convicted and sentenced the accused/appellants as mentioned above.

5. We have heard Shri Abhay Tiwari, learned counsel on behalf of the accused/appellant and Shri D.K.Gwalre, Dy. G.A. on behalf of the State.

6. There is no admitted fact in the instant case. Learned trial Court formulated the first question for consideration as to whether Nanhu @

23

Sukhlala is dead? The identity of the deceased has been seriously questioned because on the basis of merg intimation the police reached the place of occurrence and prepared inquest on the dead body of the deceased. From the perusal of the inquest report as also from the post mortem report it is evident that the body of the deceased was unidentifiable and in order to establish the identity of the deceased, the prosecution has relied upon the identification memo of Ex.P.-2 which relates the identification conducted by Loknath (P.W.-5) of pant, shirt, air gun, suit case, deck and Benzo. The above articles were put for identification before the witnesses P.W.-4 Dhanuram and P.W.-15 Daulat and the articles were correctly identified by the father and brother of the deceased namely Ramcharan and Anand Kumar (P.W.-1 & P.W.-2). However, Ex.P-2 does not bear the signature of the identifier i.e. P.W.-1 & P.W.-2. The statement of the witness P.W.-4 Dhanuram before whom identification parade was alleged to have been conducted has stated that the police called him to conduct the identification in police station Kapoo and the identification was done in the police station by P.W.-2, the brother of the deceased who correctly identified the gun, pellets, money bag, shirt and full pant. Similar is the statement of P.W.-5 Loknath before whom identification was done. P.W.-15 Daulat has stated that two persons who had gone from Raigarh had identified the articles in the identification parade. It is pertinent to note that the Court below has based it's conclusion for establishing the identity of the deceased to be Sukhlal @ Nanhu on identification of articles - the full pant, *Kadaa* and thread over the wrist of deceased found on the dead body of Sukhlal. However from perusal of the record we find that the articles from the person of the deceased were never seized or were never put to identification during investigation and therefore the identity of the deceased has not been established by the prosecution during trial and the Court below has committed a grave error in arriving at the conclusion that the unidentified body of the deceased was in fact that of Nanhu @ Sukhlal as this inference is based on document of Ex.P-2.

7. We have already pointed out that none of the articles which were found on the person of the deceased was the subject matter of Ex.P-2 and

24

therefore we are of the considered opinion that the prosecution has in fact failed to establish that the recovered dead body from the bank of river Mand was that of deceased Nanhu @ Sukhlal.

8. The second question to be decided in this appeal is whether the prosecution has been able to establish the involvement of the accused/appellants in commission of the crime in question? To establish the involvement of the accused/appellants, the learned trial Judge has relied upon the evidence of last scene together when the deceased was alive. To establish this circumstance, the prosecution has examined P.W.-3 Maniram and P.W.-23 Dhaniram. Apart from this, the learned trial Court has also referred to the statement of P.W.-1 Ramcharan, father of the deceased and P.W.-2 Anand Kumar, brother of the deceased for the above purpose. As already mentioned P.W.-1 Ramcharan has stated that the accused persons came to his house along with his son Nanhu @ Sukhlal and wished to take him to their village. Thereafter Nanhu @ Sukhlal went to their village for 7-8 days ignoring his advice. P.W.-2 Anand Kumar has stated that Nanhu went to village Golabuda along with the accused/appellants and when he did not return they sent one Maniram to make enquiry and he stated that he is acquainted with Nanhu and the accused persons. On 13th of June 1998 he went to his village Kilkila and was repairing his motor cycle, he saw the accused persons and deceased Nanhu @ Sukhlal coming towards him. Nanhu @ Sukhlal was carrying air gun whereas accused persons were carrying one moneky. After half an hour all of them went away. Nanhu told him that he shall return to his village after two-three days. Thereafter on 14th of June 1998 he returned to Raigarh and informed the same to father of Nanhu. At this, father of Nanhu also went to village Golabuda and returned. The whereabouts of Nanhu could not be ascertained though he went to village Kilkila and there he was informed by the Watchman that he had seen post mortem of one person. He narrated this to the father of Nanhu.

9. P.W.-23 Dhaniram has stated that he knew the accused persons and deceased. On 08.06.98 they came to his village and they were carrying a monkey with them and had purchased soap from his shop. He informed it

25

to the father of deceased Nanhu regarding recovery of dead body from the bank of river Mand. Thus, from the scrutiny of the above statements, the only thing that is established is that on 13th of June 1998, the appellants were found in company of deceased Nanhu @ Sukhlal by Maniram.

10. According to the case of prosecution, the dead body was recovered on 23.06.98 i.e. ten days after the incident. The doctor J.Minj who has conducted the post mortem has assessed that the deceased might have died 6-10 days prior to the conducting of the post mortem. In the aforesaid circumstances, the possibility that deceased Nanhu @ Sukhlal was alive for a considerable period even after he was seen by Maniram in the company of accused/appellants could not be ruled out and therefore only on the basis of the solitary circumstance of the last seen together, we are of the considered opinion that the evidence available on record would not be sufficient to consider the circumstance of the last scene to be an incriminating circumstance to hold the appellants guilty for causing the death of Nanhu.

11. On the basis of the aforesaid discussion we are of the considered opinion that the instant appeals preferred by the accused/appellants deserve to be allowed and the impugned judgment being wholly erroneous deserves to be set aside. Accordingly, the appeal preferred by the accused/appellants are allowed and the judgment and order of conviction passed by the trial Court convicting and sentencing the appellants under Section 302/34 of the IPC are set aside and it is directed that the accused/appellants shall be set at liberty forthwith if not required in any other case.

Sd//-
V.K.Shrivastava
Judge

Sd/-
DHIRENDRA MISHRA
Judge